

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

NO. CIV-2016-404-

UNDER Part 19 of the High Court Rules and section 239AT(3) of
the Companies Act 1993

**IN THE MATTER OF WYNYARD (NZ) LIMITED (ADMINISTRATORS
APPOINTED)** a duly incorporated company having its
registered office at Level 16, 45 Queen Street, Auckland

**AND WYNYARD GROUP LIMITED (ADMINISTRATORS
APPOINTED)** a duly incorporated company having its
registered office at Level 16, 45 Queen Street, Auckland

IN THE MATTER OF NEALE JACKSON and GRANT ROBERT GRAHAM as
administrators of Wynyard (NZ) Limited (Administrators
Appointed) of Level 16, 45 Queen Street, Auckland

Applicants

**ORIGINATING APPLICATION WITHOUT NOTICE FOR ORDERS UNDER
SECTION 239AT(3) OF THE COMPANIES ACT 1993**

Dated 14 November 2016



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To: The Registrar of the High Court at Auckland

This document notifies you that –

1. On 14 November 2016, the applicants **NEALE JACKSON** and **GRANT ROBERT GRAHAM** will apply to the Court for orders that:
 - (a) the applicants are granted leave to commence this proceeding without notice;
 - (b) the convening period defined in s 239AT(2) of the Companies Act 1993 (**Act**) (**convening period**) be extended from 29 November 2016 until 31 January 2017 in respect of Wynyard (NZ) Limited (**Wynyard**) and Wynyard Group Limited (**Wynyard Group**);
 - (c) pursuant to s 239ADO, part 15A of the Act is to have effect in relation to Wynyard and Wynyard Group as if it were provided that the watershed meeting under s 239AV may be held at any time during, and within 5 business days after the end of, the convening period as extended by the above order, notwithstanding the provisions of s 239AV;
 - (d) within 7 working days of any orders being granted, notice of this originating application and any orders be given to employees and creditors of Wynyard by:
 - (i) posting notice on KordaMentha's website page concerning the administration of Wynyard and Wynyard Group; and
 - (ii) advertising once in the New Zealand Herald and the Christchurch Press.
 - (e) leave is granted to any person who can demonstrate a sufficient interest to apply to modify or discharge these orders, including any creditor of Wynyard, on appropriate notice being given to the applicants;

- (f) the Court file in this proceeding shall be marked and treated as confidential and shall not be available for search by any person until 31 January 2017;
- (g) leave is reserved to the applicants to apply further in respect of any ancillary orders arising out of the orders made.

2. The grounds on which each order is sought are as follows:

Procedure – Order 1(a)

- (a) It is in the interests of justice that the proceeding be commenced by way of originating application without notice because:
 - (i) the convening period ends on 22 November 2016;
 - (ii) seeking the orders in paragraph 1 above on notice under the procedure provided by part 5 of the High Court Rules would cause undue delay; and
 - (iii) the creditors' rights are adequately protected by the orders sought in paragraphs 1(d) and 1(e) above.

Extension of time – Order 1(b)

- (b) On 25 October 2016 the applicants were appointed as joint and several administrators of Wynyard and Wynyard's sole shareholder, Wynyard Group. Wynyard also has four wholly owned subsidiaries in foreign jurisdictions, namely:
 - (i) Wynyard (UK) Limited (Administrators Appointed) (**Wynyard UK**);
 - (ii) Wynyard (Australia) Pty Limited (Administrators Appointed) (**Wynyard Australia**);

- (iii) Wynyard (Canada) Inc (in Bankruptcy); and
 - (iv) Wynyard (USA) Corporation (in Bankruptcy);

(together, **Companies**).

- (c) The applicants' role as administrators is to advance the objects of s 239A of the Act, namely to provide for the business, property and affairs of Wynyard and Wynyard Group to be administered in a way that:
 - (i) maximises the chances of Wynyard and Wynyard Group, or as much as possible of their business, continuing in existence; or
 - (ii) if that is not possible, results in a better return for the Wynyard and Wynyard Group creditors and shareholders than would result from an immediate liquidation of Wynyard and Wynyard Group.
- (d) Wynyard's business is complex. It involves the development and sale of bespoke software to large commercial and governmental customers in New Zealand and around the world. The different software business units operate across four different jurisdictions.
- (e) Under s 239AT of the Act, the applicants must convene the watershed meeting within 20 working days after their appointment as administrators of Wynyard and Wynyard Group, i.e. by Tuesday 22 November 2016.
- (f) Pursuant to s239AU(3) of the Act the applicants are also required to prepare, amongst other things, a report about the business, property, affairs and financial circumstances of Wynyard and Wynyard Group for circulation to their creditors by Tuesday 22 November 2016;

- (g) The applicants are presently in the process of negotiating possible sales of Wynyard's various business assets, including the sale of the "Cognevo" business that it runs in conjunction with Wynyard UK and Wynyard Australia.
- (h) The applicants consider that the sale of Wynyard's software business and other assets needs to be finalised and implemented urgently in order to maximise the return for creditors.
- (i) Negotiating and (hopefully) completing the sales is technically and practically complex by virtue of the nature of the business and assets in question and the associated cross-border issues.
- (j) The applicants are necessarily relying on assistance from Wynyard's Executive Director and Senior Management staff to finalise and implement the sales. The applicants will also need to rely on some or all of those Wynyard personnel to prepare the material they need to provide to creditors in advance of the watershed meeting.
- (k) The applicants will be able to report more meaningfully to the creditors if the convening period is extended to enable the applicants to finalise the sale of Wynyard's business and assets.
- (l) An extension of the convening period is more likely to achieve the objects of s 239A of the Act, in that it is likely to maximise the chances of Wynyard and Wynyard Group's creditors receiving a better return than would result from an immediate liquidation of Wynyard and Wynyard Group.
- (m) There is no likely prejudice to Wynyard or Wynyard Group's creditors in allowing the extension to the convening period.

Watershed Meeting during extended convening period – Order 1(c)

- (n) While the extension is a convening period sought is only for two months (with the Christmas holiday period intervening), order 1(c) will allow the applicants to call the watershed meeting at an earlier time within the convening period if the circumstances of the administration justify this.

Opposing creditors (if any) – Orders 1(d) and (e)

- (o) The extension of the convening period sought by the applicants should enable the intended sale process to be completed which is in the best interest of all creditors.
- (p) Any person who can demonstrate a sufficient interest in the affairs of Wynyard, including a creditor, who wishes to modify or discharge the orders will have an opportunity to do so pursuant to order 1(e).
- (q) Appearing in the affirmation of Neale Jackson affirmed in support of this application.

- 3. The application is made in reliance on High Court Rules 19.2(c), 19.7 to 19.11; s 239AT and s 239ADO of the Companies Act 1993; and the principles appearing in *Re Postie Plus Group Ltd (Administrators Appointed)* [2014] NZHC 1337, *Re WGL retail Holdings Ltd* [2011] NZCCLR 22 (HC), and *Re Nylex (New Zealand) Limited* HC Auckland CIV-2009-404-1217.

4. I certify that this application complies with the rules.

Date: 14 November 2016

Signature:

A handwritten signature in blue ink, appearing to read 'R B Stewart', written over a horizontal line.

R B Stewart QC/M V Robinson
Counsel for Applicants

This document is filed by MICHAEL VICTOR ROBINSON solicitor for the applicants of the firm Simpson Grierson.

The address for service of the applicants is at the offices of Simpson Grierson, Level 27, 88 Shortland Street, Auckland.

Documents for service on the applicants may be left at that address for service or may be posted to the solicitor at Private Bag 92518, Auckland, or left for the solicitor at a document exchange for direction to DX CX10092 or transmitted to the solicitor by facsimile to +64-9-307 0331.